



Jena Band of Choctaw Indians

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Streamlining Deployment of Small Cell)	WT Docket No. 16-421
Infrastructure by Improving Wireless)	
Facilities Siting Policies;)	
Mobilitie, LLC Petition for)	
Declaratory Ruling)	

COMMENTS OF THE JENA BAND OF CHOCTAW INDIANS

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April 7, 2017

The Jena Band of Choctaw Indians, through the 1830 Indian Removal Act and the 1830 Treaty of Dancing Rabbit Creek, is located in Jena, Louisiana. The Jena Band of Choctaw Indians works with a variety of federal agencies on small and large projects in the compliance of federal laws, including but not limited to the National Historic Preservation Act (NHPA), the Native American Graves Protection and Repatriation Act (NAGPRA), the National Environmental Protection Act (NEPA) and the Archaeological Resources Protection Act (ARPA). Our tribe protects irreplaceable sites and locations that are of religious and cultural significant to our people today, by continuing the successful collaborative processes that have been established with federal agencies, other Indian tribes, and project developers.

The Federal Communications Commission's Tower Construction Notification System (TCNS) system has proven to be a very useful tool to track, monitor, and expedite the placement of cellular technology infrastructure. Over the past seven (7) years, we have worked with and developed quality relationships with the many consultants installing telecommunication infrastructure facilities, including cell tower siting, through the TCNS Program. Our tribe provides prompt response to cell tower notifications. If and when any situations arise using the TCNS Program, tribes have been able to promptly contact industry consultants and/or FCC staff to expedite resolutions. With the emerging 5G technology by the wireless telecommunications industry we can see the benefits of modernizing the existing TCNS system to meet our needs. Though technically not a local government for the purposes of this rulemaking, Indian tribes face many of the same challenges that have described in the Public Notice and which the telecommunications industry has mentioned as a concern to their interests.

Regarding the issue of how much time is required to respond to a project posted to the TCNS system, the Jena Band of Choctaw Indians requires 30 days to appropriately respond, upon receipt of all appropriate documentation necessary to perform an adequate review of each project, which includes but is not limited to research of our historical maps, documents, oral history accounts, tribal sacred and significant site files, state site files, GIS information, etc. Currently, the Jena Band of Choctaw Indians requests maps, GPS coordinates, and any previous or current Cultural Resources Survey reports that were or will be performed in each location. We also prefer to receive the 620/621 forms for each project.

The response time is more than adequate when all of the required documentation is submitted, as requested, with the initial project notification. The Jena Band of Choctaw Indians take pride in the fact that the Tribe is in full compliance with the TCNS system, and the Tribe disputes industry's opinion that the system is not functioning in a positive manner. The impression that Tribes using the TCNS system are somehow hindering progress of infrastructure deployment is an inaccurate and unfair account of the facts, as they pertain to the Jena Band of Choctaw Indians.

The Jena Band of Choctaw Indians proposes that a definitive process for "Industry-Tribal Dispute Resolution" be developed for instances where response times lag beyond the 30 day review/comment period, which begins once the Tribe receives ALL of the required information to perform an adequate review and research. The Federal Communications Commission (FCC) should be the facilitator and enforcer of the "Dispute Resolution" policy, as the lead agency performing government to government consultation with Tribes. The development of this policy will require the agency to consult with Tribes throughout the process. This policy should also address a process to follow for instances where a concurrence between Industry and the Tribes cannot be found.

The Jena Band of Choctaw Indians contends that "Small Cells" and deployment methods have not been thoroughly and factually explained by Industry. Educational sessions to properly inform the Tribes of

the 5G technology SHOULD take place prior to the deployment. Because the Jena Band of Choctaw Indians is not certain whether "Small Cells" are considered small, noninvasive boxes that are attached to existing structures and are collocated to existing poles or if "Small Cells" involve the construction of new poles, potentially reaching 140' in height, the Tribe is not convinced that these "Small Cell" devices will not impact Cultural Resources. Because of these facts, the Jena Band of Choctaw Indians has not approved any deviation in our TCNS review process, meaning that "Small Cells" will be reviewed and researched in the same manner that macro cells are reviewed and researched. Therefore, our expedited review fee applies to "Small Cells" and we have denied the batching of any "Small Cell" or DAS projects in the TCNS system. We would welcome the opportunity to learn more and explore options for efficiencies.

Fees associated with deployment of new technology has come to the forefront in the "Mobilitie, LLC Petition for Declaratory Ruling." The Jena Band of Choctaw Indians requests payments upfront, prior to the research and review of each project posted to the TCNS system, simply because of the fact that companies were not submitting payments due the Tribe for expedited reviews in a timely fashion and sometimes not at all. The Tribe has a right to be fairly compensated for the time necessary to perform an expedited review and research, just as local governments, municipalities, and states are.

The Jena Band of Choctaw Indians supports the use of rights of way for infrastructure projects, so long as proof and documentation exists that these areas have had a proper Cultural Resources Survey (CRS) and that proof and documentation exists that these areas have gone through the Section 106 process under the NHPA. An area determined as a "public right of way" does not preclude the Section 106 process and the definition of a federal undertaking still applies to all "Small Cell" and DAS deployments, as they are regulated by the FCC. As proof of a CRS, SHPO/THPO concurrences and a consultation record can be provided for areas that have gone through the Section 106 process. The burden should be on the company to research and provide the documentation necessary to prove that there is compliance with the NHPA or NEPA, if applicable.

Because of the great number of projects reviewed each year, through the TCNS system, the Jena Band of Choctaw Indians has employed an individual to serve as the TCNS Specialist, aside from the Tribal Historic Preservation Officer (THPO). This individual is solely responsible for the research, review and response to TCNS projects, which numbered over 600 projects in 2016, within the Tribe's area of interest, including all of our ancestral homelands and historically significant areas. Our TCNS Specialist's work is separate from our THPO program, thus our TCNS work is not reported as part of our annual report on THPO activities.

The Jena Band of Choctaw Indians has made every effort to ensure that delays in response and concurrence does not occur. The fees charged for expedited review of TCNS projects are used to offset administrative burdens, overhead costs and to avoid unnecessary delays in responding. The TCNS system has proven to be a useful tool for the Jena Band of Choctaw Indians to engage in consultation.

The opinions and statements within this statement are those of the Jena Band of Choctaw Indians, by and through its sovereign Tribal Government. The Tribe is obliged to offer its perspective and comments on the issues presented in the "Mobilitie, LLC Petition for Declaratory Ruling." The Jena Band of Choctaw Indians requests that consultation with Tribal Nations occur prior to approving any process that may affect Tribes across the US, per EO 13175: Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000) and EO 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994).

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4-7-17

Date